

REMARKS

This Response is submitted in reply to the non-final Office Action mailed on December 5, 2005. A petition for a three month extension of time is submitted herewith. The Director is authorized to charge \$1,020.00 for the petition for extension of time or any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-519 on the account statement.

Claims 1-22 are pending in this application. In the Office Action, Claims 1, 3-6 and 16 are rejected under 35 U.S.C. §102 and Claims 2, 7-15 and 17-22 are rejected under 35 U.S.C. §103. For the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1, 3-6 and 16 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,081,559 to *Jeffery* et al. ("*Jeffery*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claim 1 recites, in part, a melt-resistant fudge article that comprises a liquid fat component, for example, in an amount sufficient to minimize external adhesiveness of the article. For instance, the liquid fat component is in liquid form at room temperature. In one embodiment, the liquid fat or oil component can comprise coconut oil and soy oil. An advantage of the present invention is that adhesion resistance can now be provided to melt-resistant fudge articles by lubrication from the liquid fat component, e.g., fluid oil. The fluid fat or oil that resides at the open ends of the pores at the very outside edges of the final melt-resistant fudge article can provide a trace of surface lubrication to facilitate adhesion resistance, particularly to wrapping materials. Had too much solid fat been incorporated (use of solid fat is what is normally used to provide melt resistance), then the degree of lubrication would be undesirably minimized or prevented. In contrast, Applicants respectfully submit that *Jeffery* fails to disclose or suggest every element of the present claims.

Jeffery fails to disclose or suggest a liquid fat or oil component as required, in part, by Claim 1. Instead, *Jeffery* is entirely directed toward a product using solid fats (e.g. fats that are solid at room temperature). For example, *Jeffery* teaches using hardened fats such as hardened palm kernel oil or a cocoa butter replacement fat. See, *Jeffery*, column 2, lines 35-36. *Jeffery* also teaches using hardened palm kernel oil in Example 2. In fact, all of the fats used by *Jeffery*

are in solid form. Moreover, liquid fats or oils have distinguishable structure and components when compared to fats in solid or hardened form. For at least these reasons, Applicants respectfully submit that Claim 1 and Claims 3-6 and 16 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of Claims 1, 3-6 and 16 under 35 U.S.C. §102 be withdrawn.

Claims 2, 7-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jeffery* in view of certain other cited references. Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claims 2, 7-15 that depend from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claims 2, 7-15 in combination with the novel elements of Claim 1.

In the Office Action, Claims 17-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jeffery* in view of U.S. Patent No. 5,108,769 to Kincs ("*Kincs*"), U.S. Patent No. 4,338,350 to Chen et al. ("*Chen*") and U.S. Patent No. 5,486,376 to Alander et al. ("*Alander*"). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claims 17 and 20 recite, in part, a melt-resistant fudge article that comprises a liquid fat component, for example, in an amount sufficient to minimize external adhesiveness of the article. In contrast, Applicants respectfully submit that even if combinable all of the claimed elements are not taught or suggested by the cited references.

For example, *Jeffery* fails to disclose or suggest a liquid fat component as required, in part, by Claims 17 and 20. In fact, *Jeffery* fails to even recognize the advantages of using same as taught by Applicants. Further, *Kincs* fails to disclose or suggest a liquid fat component. In fact, *Kincs* specifically teaches used hardened fats. See, *Kincs*, column 3, lines 16-53. *Chen* also fails to disclose or suggest a liquid fat component. Similarly, *Alander* fails to disclose or suggest a liquid fat component and is instead directed to using hard or solid fats. Moreover, none of the cited references teaches or recognizes the advantages of using a liquid fat component in accordance with the present claims. For at least the reasons discussed above, the combination of *Jeffery* in view of *Kincs*, *Chen*, and *Alander* does not teach, suggest, or even disclose the present claims, and thus, fails to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 2, 7-15 and 17-22 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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